

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BERNARD CARTER,

Plaintiff,

Case No. 1:16-cv-667

v.

Honorable Robert Holmes Bell

THE GEO GROUP, INC. Et al.,

Defendants.

/

AMENDED ORDER TO PROCEED IN FORMA PAUPERIS

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983.

By order entered July 15, 2016 (ECF No. 6), the Court granted Plaintiff's request to proceed *in forma pauperis* and required Plaintiff to pay an initial partial filing fee of \$42.60 in accordance with 28 U.S.C. § 1915(b)(1). The Court ordered that the initial partial filing fee be paid within 28 days, and warned Plaintiff that his case would be dismissed without prejudice should he fail to pay.

Plaintiff has filed a motion stating that he is unable to pay the initial partial filing fee, and, thus, seeks to proceed without payment of the initial partial filing fee or to have his case dismissed without prejudice (ECF No. 7). Upon further review of Plaintiff's financial documents, the Court finds that Plaintiff lacked sufficient funds at the time his case was filed to pay the initial partial filing fee. Consequently, Plaintiff will be allowed to proceed without payment of the initial partial filing fee. *See McGore v. Wrigglesworth*, 114 F.3d 601, 606 (6th Cir. 1997).

However, although § 1915(b)(4) permits Plaintiff to avoid the payment of an initial partial filing fee at this time, the Court is still required to impose an initial partial filing fee of \$42.60, and, when funds become available, Plaintiff must pay this fee. *McGore*, 114 F.3d at 606.

Even if the account balance is under ten dollars, prison officials must still forward payments to the district court to pay the initial partial filing fee. The ten-dollar rule of § 1915(b)(2) is applicable to fees and costs due only after the initial partial filing fee is paid. Once the initial partial filing fee is paid in full, the ten-dollar and twenty-percent requirements of § 1915(b)(2) become applicable.

Id.

Once Plaintiff has paid the initial partial filing fee, he must pay the remainder of the \$350.00 filing fee through monthly payments of 20 percent of the preceding month's income credited to Plaintiff's prison trust fund account. 28 U.S.C. § 1915(b)(2). These payments will be forwarded by the agency having custody of the prisoner to the Clerk of this Court each time the amount in Plaintiff's trust account exceeds \$10.00, until the filing fee of \$350.00 is paid in full. 28 U.S.C. § 1915(b)(2); *McGore*, 114 F.3d at 607; *Hampton v. Hobbs*, 106 F.3d 1284 (6th Cir. 1997). The check or money order shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made. If the amount in Plaintiff's account is \$10.00 or less, no payment is required for that month. *Hampton*, 106 F.3d at 1284-85.

The Court shall review the case pursuant to 28 U.S.C. §§ 1915(e), 1915A and/or 42 U.S.C. § 1997e(c)(1), as appropriate. After the Court reviews the case, the Court will determine whether dismissal or service of process is appropriate, and will fashion an order accordingly. Should the case be dismissed, voluntarily by Plaintiff or by the Court, Plaintiff shall remain responsible for the filing fee. *McGore*, 114 F.3d at 607. Any pleadings herein served by the United States Marshal shall be at the expense of the United States government. All costs shall be reimbursed to the United States should Plaintiff prevail.

Once service of process has been ordered, Plaintiff shall serve upon defendants, or if an appearance has been entered by an attorney, upon the attorney, a copy of every further pleading

or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed with the Clerk of the Court a certificate stating the date a true and correct copy of any document was mailed to defendants or the attorney. Any paper received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court. Accordingly,

IT IS ORDERED that Plaintiff's motion to proceed *in forma pauperis* without payment of the initial partial filing fee (ECF No. 7) is GRANTED because Plaintiff was without sufficient financial resources to pay the initial partial filing fee at the time the complaint was filed. Plaintiff will remain liable for the initial partial filing fee of \$42.60 as funds become available.

IT IS FURTHER ORDERED that the agency having custody of Plaintiff shall collect the initial partial filing fee of \$42.60 as soon as funds become available. After the initial partial filing fee has been paid, the agency having custody of Plaintiff shall collect the remainder of the filing fee. As outlined above, each month that the amount in Plaintiff's account exceeds \$10.00, the agency shall collect 20 percent of the preceding month's income and remit that amount to the Clerk of this Court. The agency shall continue to collect monthly payments from Plaintiff's prisoner account until the entire filing fee of \$350.00 is paid.

Dated: October 18, 2016

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

SEND REMITTANCES TO:

Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., N.W.
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."